

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL REECE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

- against -
Show & Prove LLC D/B/A Marc Ecko Entertainment, Marc Ecko Unltd.,
Marc Ecko Enterprises et al, Atari, Infogrames Entertainment, Sony
Computer Entertainment of America LLC, Sony et al, Microsoft,
Foundation 9 Entertainment aka The Collective et al.

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#
DATE FILED: 3/7/11

10 Civ. 2901 (DF) (JSR)

AFFIRMATION IN OPPOSITION
TO MOTION

TO DISMISS SECOND AMENDED
COMPLAINT

I, DANIEL REECE, affirm under penalty of perjury that:

1. I, DANIEL REECE, am the plaintiff/defendant in the above entitled action, and
respectfully submit this affirmation in opposition to the motion dated JANUARY 20, 2011,
(name) (circle one) (date of motion)

made by Frankfurt Kurnit Klein & Selz, P.C. asking that the court order the following relief:
(name of moving party)

To dismiss the second amended complaint based on lack of "substantial similarity" and other claims within the
defendant's memorandum of law. (state what the moving party wants the Judge to order)

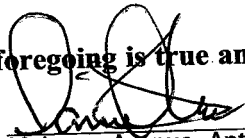
2. I have personal knowledge of facts which bear on this motion because I am the plaintiff in the
case; complainant. I am also the copyright owner, author, and visual artwork artist as recognized under sec. 106a
(state the basis on which you learned of the relevant facts)

3. The motion should be denied because (state your reasons using additional paragraphs and sheets of paper as necessary)
Even in the pre-discovery stages it is apparent that the defendant has not been forthcoming with information vital
to prove their denial of visual arts infringement. Specifically, with respect to 106a, and also "substantial similarity".

4. In view of the foregoing, it is respectfully submitted that the motion should be denied.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: NEW YORK, NY
(city) (state)
MARCH 7th, 2011
(month) (day) (year)

Signature 
Address 700 Lenox Avenue Apt. 24 - H
New York, New York 10039 - 4531
Telephone Number (917) 334 - 0245
Fax Number (if you have one) N/A

Reece

vs.

Show & Prove LLC D/B/A Marc Ecko Unltd. et al

Affirmation in Opposition

To Motion To Dismiss Second

Amended Complaint

Continued (p.1)

3.

Fact 1 : The defendant claims no "substantial similarity" amongst the Visual Artwork.
This claim is used by showing exhibit J from the Fernandez declaration and not exhibits letter I and L .

Firstly,

In exhibit letter I we see the capital D, lower case I , and upper case P , all visually and artistically expressed in graffiti style. The incorporation of other elements inherent in my copyright protected works are also clear as you see the star not above the lower case I but above in the letter D distorted And so that there is no doubt, as if to say, also seen, is an additional star enclosing the opening of the upper case P .

It can only be thought to be curious how this was not presented to the court in defendant's claim of no "substantial similarity." It could be argued that the defendant's example to the court of exhibit J and the exhibit letter I are totally dissimilar.

The example of exhibit letter I contains key elements of my known artwork, with all artistically expressed: 1) Upper case D; 2) Lower case letter I ; 3) Upper case P ; 4) Star element ; 5) Connectivity of the artistically expressed letters.

Secondly, in Fernandez exhibit L we see in primary colors, and 3-D, 2-D outlining key elements again: 1) Upper case D; 2) lower case I ; 3) Upper case P ; 4) Connectivity of the artistically expressed letters; 5) The Upper case P is especially noteworthy. 5) In Goldman's declaration exhibit C p.3 when compared to Fernandez exhibit letter I expresses "substantial similarity." This as it could be interpreted that the same artist authored the two visual artworks.

Finally, sec. 106a of the Copyright Law (VARA) gives a special consideration to visual artistry in that the copyright owner has moral rights. In Circular 40 from the U.S. Copyright Office, p. 5, it states: "For certain ... visual art ... authors are accorded rights of attribution and integrity. The right of attribution ensures that artists are correctly identified with the works of art they create and that they are not identified with works created by others. "

Reece

vs.

Show & Prove LLC D/B/A Marc Ecko Unltd. et al

Affirmation in Opposition

To Motion To Dismiss Second

Amended Complaint

Continued (p. 2)

Fact 1 A - B :

The defendant claims no "substantial similarity" amongst the Visual Artwork. They say that by comparing my copyrighted art to that within the game that " ... there are no similarities (p.11 defendant's mol) in the artistic expression ..."

This claim is curious, if we look at the letters M, S, and I , visually and artistically expressed, we see that a case can be made against no similarity. Indeed the defendants admit that Dipism which is the original artist's way of saying that this is a total artistic expression and a signature artistic "piece" (*masterpiece*) appears not once, not twice, but three times while only one representation is included in the defendant's mol at this pre-discovery point in time. The importance of the added ISM to the artist is that it accentuates the artistic expression as one of totality and singularity, capable of only being attributed, and recognized, (amongst fellow artists of the genre as well) as being solely attributed, to that particular individual artist adding it to their visually artistic work paintings, drawings, and or writings.

Similarly in Fernandez's declaration under exhibit letters E and F we see the similar representation of the exemplified piece from p. 11. We never see the third representation as alluded to anywhere in Fernandez's declaration. We see : 4. Attached hereto as Exhibits B through L are true and correct copies of every other graphic design ..."

The case can be made the inclusion was also done willfully as it is alleged to appear more than once at the very least as best determined and includes elements from the original, the structure of the M, S, I and also dots, and the inclusion of stars. In most of my art I incorporated stars and or signed including at least one star.

Answer to Point II :

This was addressed in judicial conference on Sept. 16, 2010 by the Honorable Deborah Freeman being previously addressed by Chief Judge Loretta A. Preska who gave specific instructions to sustain a credible claim of copyright infringement supported by judicial statute. The order to me dated April 5, 2010. Upon compliance as stated the claim as amended complaint "shall be reviewed for *substantive sufficiency* and then, if proper, shall be reassigned to a district judge ..."

Reece

10 Civ. 2901 (DF) (JSR)

vs.

Show & Prove LLC D/B/A Marc Ecko Unltd. et al

Affirmation in Opposition

To Motion To Dismiss Second

Amended Complaint

Continued (p.3)

Answer to Point III:

In this pre-discovery instance the depth of the involvement other than the financial benefits / arrangement through licensing, and sales cannot [sic] fully be determined. It can be said that all entities listed derived a financial benefit either through willful direct infringement, simple infringement, and or vicarious and or contributory copyright infringement (Please see reply affirmation in support of motion for a third amended complaint) .

Answer to Point IV:

Please see Reply Affirmation in Support of Motion For A Third Amended Complaint number 5 . This references the U.S. Copyright Law and the Berne Convention.

Answer to Point V:

This to be determined if necessary by the Court, respectfully submitted.

Answer to Point VI:

This also to be determined by the court as there are questions concerning attributable roles, time of existence of entities, and true measures of involvement in the instant case . This starting with Show & Prove LLC who is not credited during the time of game production but who is now involved with what is believed to be Ecko's latest gaming entry "Dexter" for i Phone, I Pad etc.

The branding for the game in question is undeniably ecko unltd. ; the rhino logo, and Ecko Ultd. Games. (Please see Reply Affirmation as cited above in its entirety).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL REECE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

10 Civ. 2901 (DF) (JSR)

- against -

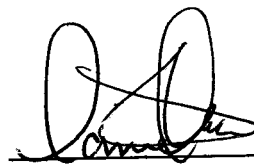
AFFIRMATION OF SERVICE

Show & Prove LLC D/B/A Marc Ecko Entertainment, Marc Ecko Unltd.,
Marc Ecko Enterprises et al, Atari, Infogrames Entertainment, Sony
Computer Entertainment of America LLC, Sony et al, Microsoft,
Foundation 9 entertainment aka The Collective et al.

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, DANIEL REECE, declare under penalty of perjury that I have
(name)
served a copy of the attached Affirmation in Opposition to Motion to Dismiss Second Amended Complaint
(document you are serving)
upon Jessie Beeber and Jeremy Goldman attorneys for defendants whose address is 488 Madison Ave. NY
(name of person served)
Frankfurt Kurnit Klein & Selz P.C. - 488 Madison Avenue, New York, New York, 10022
(where you served document)
by U.S Mail
(how you served document: For example - personal delivery, mail, overnight express, etc.)

Dated: NEW YORK, NY
(town/city) (state)
MARCH 7th 20 11
(month) (day) (year)



Signature

700 Lenox Avenue Apt. 24 - H
Address

New York, New York
City, State

10039 - 4531
Zip Code

(917) 334 - 0245
Telephone Number